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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/974,777	10/09/2001	Max Schaldach	7040-45	6887
21324	7590	02/03/2005	EXAMINER	
HAHN LOESER & PARKS, LLP One GOJO Plaza Suite 300 AKRON, OH 44311-1076			THALER, MICHAEL H	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 02/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/974,777

Applicant(s)

SCHALDACH ET AL.

Examiner

Michael Thaler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 5-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Appendix</u> .                         |

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Claim 7 is a duplicate of claim 5 and should therefore be canceled.

Claims 1, 2, 5-10, 20-27, 47 and 48 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Alt (DE 19834956). Alt, as shown the attached appendix (which is based on the equivalent U.S. Patent 6,398,805 only because this figure is clearer than the equivalent figure in the foreign patent), discloses bar elements and connecting bars wherein the first and second bar element portions are entirely concave over the entire length of the bar element portion as now claimed. Alternatively, it would have been obvious that the Alt first and second bar element portions are entirely concave over the entire length of the bar element portion since figure 1 appears to show this. As to claim 5, the bar element portions are inherently adapted to keep stresses below a plastic deformation limit upon being moved to the implantation location by being curved in such a way.

Claims 11-19, 28-46 and 49-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (DE 19834956) in view of Hoefer (DE 19840645). As to claim 11, Alt fails to disclose the direction of curvature of the bar element portions changing in the longitudinal direction of the stent. However, Hoefer teaches that the direction of curvature of the bar element

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portions should change in the longitudinal direction of the stent (as shown in figure 2 wherein the curvature alternates between concave and convex in the longitudinal direction of the stent). This arrangement has the apparent advantage of increasing the flexibility of the stent in various directions. It would have been obvious to change the direction of curvature of the Alt bar element portions so that it too would have this advantage. As to claim 31, Alt fails to disclose the connecting bars as being rectilinear and extending between bar elements that are displaced relative to each other. However, Hoefer teaches that the connecting bars should be so constructed (as shown in figure 2). This arrangement has the apparent advantage of increasing the flexibility of the stent in various directions. It would have been obvious to so construct the Alt connecting bars so that it too would have this advantage.

Claims 57-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (DE 19834956) in view of Hoefer (DE 19840645) as applied to claims 11-19, 28-46 and 49-56 above, and further in view of Kveen et al. (6,261,319). Alt fails to disclose the connecting bars engaging a central region of the bar element portions and being adapted to the curvature thereof. However, Kveen et al. teach that the connecting bars should be so constructed (e.g. connecting bar 1032 in figure 13). This

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arrangement has the apparent advantage of increasing the flexibility of the stent in various directions. It would have been obvious to so shape the Alt connecting bar so that it too would have this advantage.

Claim 65 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (DE 19834956) in view of Kveen et al. (6,261,319) for the reasons set forth in the paragraph above.

Applicant's arguments with respect to claims 1, 2, 5-65 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated

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from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571)272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

mht  
2/2/05



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731